BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

KEVIN E. WICHMAN	)	
Claimant	)	
V.	)	
	)	Docket No. 1,074,650
HAMMERSMITH MANUFACTURING & SALES, INC.	)	
Respondent	)	
AND	)	
	)	
CINCINNATI INDEMNITY COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant requested review of the May 25, 2016, Award by Administrative Law Judge (ALJ) Rebecca Sanders. The Board heard oral argument on September 1, 2016.

APPEARANCES

James B. Biggs, of Topeka, Kansas, appeared for the claimant. Christopher J. McCurdy, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument to the Board, the parties acknowledged the ALJ, in the Award, misidentified claimant's last day of work with respondent as October 6, 2013. The parties stipulated claimant's last day worked for respondent was October 6, 2014.

ISSUES

The ALJ determined claimant sustained accidental injury in the course of his employment with respondent. The ALJ further determined claimant was not entitled to permanent partial general (work) disability based on the average of claimant's post-injury wage loss and percent of task loss. Claimant's award was limited to a 15 percent whole body functional impairment, based on the opinion of Adrian Jackson, M.D. Claimant's request for future medical treatment was denied.

Claimant appeals and requests the Board determine he was laid off because of decreased production due to his work injury. Therefore, he is entitled to a work disability of 63 percent based on the opinions of Dr. Prostic and Michael Dreiling.

Respondent requests the ALJ's Award be affirmed.

The issues on appeal are:

1. What is the nature and extent of claimant's functional impairment and disability?

2. Is claimant entitled to future medical treatment?

FINDINGS OF FACT

Claimant began working for respondent on November 27, 2006. After a year, claimant became an assembler and performed that job until October 6, 2014, his last day of employment with respondent.

Claimant testified that on September 11, 2013, he suffered injury to his back, neck and left arm after falling off a ladder onto a concrete platform while hosing[1] an industrial crane. Claimant reported his fall to his supervisor, Doug McGuffin, the plant manager, and an appointment was scheduled with the company doctor. Claimant was given pain medication and muscle relaxers, which provided some relief. Claimant was able to continue working, but continued to have pain and numbness in his neck a week or so after the accident. As a result, the company doctor sent claimant to Dr. McKenzie, a chiropractor.

Claimant received two to three weeks of chiropractic adjustment that relieved the pressure claimant was feeling, but the relief was temporary. Claimant was sent for an MRI, which showed damage to some of the disks in his neck.

Claimant met with Adrian P. Jackson, M.D., a spine surgeon, on October 9, 2013, upon referral by respondent, for evaluation of his neck pain. Claimant's chief complaints were neck pain and interscapular pain, and numbness and tingling in the left little finger and ring finger. Dr. Jackson identified claimant's September 11, 2013, injury as the prevailing factor for his condition and need for the MRI. Claimant was provided with restrictions.

[1] Installing hydraulic hoses to a crane.

On October 21, 2013, Dr. Jackson reviewed claimant's MRI and recommended epidural steroid injections targeting the C5-6 and C6-7 disc osteophyte[2] complexes. Claimant was sent to physical therapy after two steroid epidural injections.

By January 8, 2014, claimant was not showing improvement despite physical therapy and injections. On January 15, 2014, Dr. Jackson reviewed treatment options with claimant and the plan was to proceed with surgery. Dr. Jackson opined that the work-related injury claimant sustained in September 2013 represents the prevailing factor with regard to his current and ongoing clinical condition and the need for surgical intervention. Dr. Jackson performed a cervical anterior discectomy, cervical fusion at C5-7 and decompression on April 15, 2014.

Over several months post surgery, claimant was eased into physical therapy. Claimant was released to light duty in June 2014, six weeks post surgery with temporary restrictions. On July 9, 2014, Dr. Jackson found claimant to be at maximum medical improvement and allowed him to return to regular duty without restrictions. Claimant was told to use common sense and caution. Dr. Jackson testified he told claimant if an activity is painful for him, simply do not do it.

On July 28, 2014, Dr. Jackson assigned claimant a 15 percent permanent partial impairment to the body as a whole, as a result of the work injury and based on DRE Category III of the 4th Edition of the AMA *Guides*.[3]

Dr. Jackson did not anticipate any need for future medical treatment as a result of claimant's neck injury, but there is a possibility that, based on his degenerative condition, claimant could have issues elsewhere. He testified that neck pain once a month was not enough to change his opinion on the need for future medical treatment as the result of claimant's accident.

Dr. Jackson reviewed the task list created by vocational expert Michelle Sprecker and did not find any tasks on the list compiled by Ms. Sprecker that claimant could not objectively perform.

When claimant returned to full duty on July 10, 2014, he was allowed to use an overhead crane to aid him in his job duties, particularly the lifting. He performed assembly work for three or four weeks and then was laid off. Claimant indicated it was his understanding that he was laid off because the company was getting new product and his

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[2] A combination of soft disc material and bone spur.

[3] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

productivity was slow and he was not able to keep up. Claimant knew the department was going to taper down, but he did not know when.

Claimant testified when he returned to work he was only able to lift 20 pounds and did that for four weeks. He indicated the new project involved building attachments for skid loaders and he was the only member of his crew not moved to that job. He has not worked anywhere since he was laid off. Claimant applied for several other jobs with respondent, but was not hired. Claimant testified he did not get any of the jobs he applied for because Matt Hammersmith, one of the owners of respondent was concerned about claimant's physical ability to do the jobs. The three jobs that claimant applied for were painter prep, machine operator and welder. Claimant believed that physically he could have performed all of those jobs.

Claimant indicated that even after one of his former co-workers had a stroke and could no longer perform the work, respondent did not offer him the position. This was despite the fact that claimant had previously performed this job. Claimant testified he applied for work at the local farm and home store and at the Dollar General, but there were no open positions. Claimant also applied for a job with the City of Holton, but the position went to another individual. Claimant testified in all he has applied at about eight businesses in the last 15 months.

Claimant testified his neck is still stiff and he occasionally takes a muscle relaxer. He has a steel plate and six screws in his neck. He admits to problems in his neck prior to the September 11, 2013, injury and for which he received chiropractic treatment. He denied being diagnosed with a herniated disc in his neck prior to September 11, 2013, and denied any doctor recommended a neck fusion prior to September 11, 2013. He testified that the pain in his neck from the September 11, 2013, injury is different from the pain he had prior to the injury.

Claimant's neck symptoms since the accident are sharp, piercing and numbing pain. He indicated that the numbness in his neck went down into his arms and fingers. Claimant had this symptom only occasionally before the September accident. He testified that before the September 11, 2013, accident his pain level was a four or five out of ten. After the accident, his pain level was a nine to ten.

Claimant had a low back injury in 2010, which left him with restrictions of limited lifting and pulling to 25 pounds for 10 days. Claimant also indicated he went to the chiropractor for his low and mid back. Claimant indicated he began receiving chiropractic treatment in 2003 and continued regularly through 2013. The last treatment claimant had was on June 28, 2013, which was three months before the accident. Claimant testified the adjustments were to his shoulders and up to the neck and cervical spine.

Claimant continues to have neck pain once a month and takes Flexeril, which was prescribed by his family physician. This is the only treatment claimant has received since he was released.

Doug McGuffin, production manager for respondent, testified his job duties are to take care of production and day-to-day operations. He testified respondent assembles parts for different companies. Mr. McGuffin testified claimant worked for the company as an assembler putting together industrial cranes. On a rare occasion, claimant would help to sand cranes, but it was not a part of his standard job. Mr. McGuffin also denied treating claimant in anything other than a professional manner and that he gets along with all of the employees. He also testified that it is his job to make sure that the work gets done, therefore he is not paid to be friends with the workers.

Mr. McGuffin indicated he had to write claimant up for attendance issues in 2013, after claimant missed 57 days prior to his injury. Mr. McGuffin testified that when claimant came back to work after being on FMLA[4] his production was up 30 percent, but after the accident on September 11, 2013, his production was down. He did not consider claimant to be an experienced welder and so claimant did very little of it. Mr. McGuffin testified there were two experienced welders on the crew.

In 2013 and into 2014, there was a change in the product that was being assembled. The assembly of the cranes moved to Tennessee and his crew finished what work they had in December 2014. In 2012, discussions were held with the employees about restructuring and everyone knew 2014 was the end of the contract. Mr. McGuffin testified that he simply restructured his unit and transferred his welders to weld/assembly from assembly.

Mr. McGuffin testified that he went from 12 employees down to 6 as a result of attrition from retirements and workers being let go and not replaced. Mr. McGuffin indicated that claimant was not kept on because there was only one spot left after the transition and he had to choose the most qualified between claimant and another worker. The other worker, in Mr. McGuffin's opinion, was the better worker. He indicated claimant's workers compensation injury did not play a part in the decision to lay him off. He also indicated claimant was not under any restrictions at the time of the transition. He let claimant know that his injury was not a factor in him getting passed over for the job and that reliability was a major factor when it comes to production. Mr. McGuffin indicated he wanted a versatile and efficient crew to keep production up and the plant open.

Mr. McGuffin testified that the jobs he posted listed welding experience as preferred, but not necessary. However, he would go with the applicant with experience over the

[4] Claimant was off work on FMLA from March 11, 2013, to May 6, 2013, due to a misdiagnosis of leukemia.

applicant with no experience. Not every job claimant applied for was in Mr. McGuffin's department. He testified that claimant was not rehired for a position within the company because of his reliability issues.

Claimant worked full duty between July 2014 and October 2014, but he was slower than he had been before. This also had to do with the fact that they had to retool a different product line and claimant could not keep up. Mr. McGuffin testified claimant was given a verbal warning (he did not have an exact date since nothing was written down) and a written warning on August 13, 2014,[5] before claimant was laid off. He testified he told claimant when he came back to work that he was not expecting him to be at 100 percent, but was expecting improvement, and when that did not happen, claimant was laid off.

Claimant met with Edward J. Prostic, M.D., an orthopedic surgeon, on April 6, 2015, for an examination, at his attorney's request. Claimant's complaints were intermittent aching and stiffness at the base of his neck posteriorly and occasional numbness and tingling to the ring and little fingers of either hand. Claimant reported his pain was worse with pushing, pulling and repetitious use of his hands with his arms outstretched.

Dr. Prostic examined claimant's neck and upper extremities and opined claimant sustained injury to his cervical spine with development of cervical radiculopathy and required two-level decompression and fusion from injury he sustained in the course of his employment on September 11, 2013. Dr. Prostic noted claimant continued to have radicular symptoms that may be from thoracic outlet syndrome or cubital tunnel syndrome, but this was not proven during the physical examination. He felt that medical treatment should be left open should this claim be settled so that if the radicular symptoms increase, appropriate testing and treatment could be provided.

Dr. Prostic assigned claimant a 20 permanent partial impairment to the body as a whole on a functional basis, based on the 4th Edition of the AMA *Guides*. He testified he felt claimant's impairment was more than 15 percent and that is why he assigned 20 percent and because 25 percent, the next level up in DRE, was too much. He opined the injury claimant sustained on September 11, 2013, while employed by respondent, is the prevailing factor in causing the injury, medical condition, the need for medical treatment, and the resulting impairment and disability.

On April 20, 2015, Dr. Prostic responded by letter that claimant may return to medium-level work with minimization of activities above shoulder level. He reviewed the task lists of Michael Dreiling and Michelle Sprecker and opined that of the 18 tasks identified by Mr. Dreiling, claimant could no longer perform 12 for a 67 percent task loss. Upon review of the task list of Ms. Sprecker, Dr. Prostic had two task loss opinions, the first was claimant lost the ability to perform 10 out of 24 tasks for a 42 percent task loss and

[5] McGuffin Depo., Ex. 3.

then 12 out of 24 tasks for a 50 percent task loss. This 50 percent task loss would be accurate if tasks 9 and 21 are considered a "NO" based upon the length of time claimant performs them, which would be anything longer than briefly.

Claimant met with Mr. Dreiling for a vocational assessment on March 25, 2015, at the request of his attorney. Mr. Dreiling opined claimant has always performed physically oriented work and work tasks in the labor market which would be consistent with claimant's high school education and training. Claimant reported no difficulty sitting, standing or walking. Claimant's biggest concerns were with his neck and having difficulty with work above shoulder level.

Mr. Dreiling identified 18 tasks claimant has performed during the five-year period before this work injury. Mr. Dreiling indicated claimant was earning $20 an hour at the time of his injury, but was not working at the time of their interview. Mr. Dreiling opined claimant had the ability to find employment making $9 to $10 an hour, which would leave him with a 50 percent wage loss. This loss did not take into account any loss of health insurance or other fringe benefits, which would make the loss higher. Mr. Dreiling did not do extensive research to determine claimant's wage loss. He also did not consider claimant's medical restrictions. If he had considered those restrictions, there would have been fewer jobs that claimant would be able to compete for if he were to stay with the restriction of no or minimal over-shoulder level work.

Mr. Dreiling indicated that claimant's October 2014 layoff put in him at a disadvantage in the open labor market in his geographical area when it came to earning a comparable wage. Therefore, the fact that Dr. Jackson did not assign restrictions, does not mean claimant can go back and earn the same wage he was earning at the time of the injury. He indicated work history, educational background, age and experience are other factors that go into determining the ability to earn a comparable wage.

Mr. Dreiling received all of his information from claimant. He had no documentation or job requirements from respondent. He also did not verify that claimant was told he needed to speed up his work right before he was laid off. He was not aware that the department claimant worked in before he was laid off had shut down and cranes were no longer assembled by respondent. Before claimant was laid off he was working his regular duties at a slower pace, but with no restrictions.

Claimant met with Ms. Sprecker for a vocational assessment on November 17, 2015, at the request of respondent. Ms. Sprecker noted claimant continued to apply for work up to the time of their meeting and that claimant indicated he was willing to return to a position with respondent.

Ms. Sprecker wrote that claimant was not willing to consider employment beyond a 45 mile radius from his home in Circleville, Kansas. Claimant was willing to travel as far as Kansas City for work. He would consider working at minimum wage at some point, but

did not want to work for wages below $8 or $9 an hour. He was not willing to relocate, but would consider renting a place if the wages were beneficial.

Ms. Sprecker identified 24 tasks claimant has performed in the course of his work history. Ms. Sprecker opined claimant's wage loss was 100 percent because he was not working, but that had he continued to work at his pre-injury pay rate he would not have experienced a wage loss. She also opined that because claimant was not given any restrictions he retains his ability to work at his pre-injury wage and would therefore not sustain a wage loss. If however, claimant could not return to work with respondent, or could not find a similar position for similar pay, claimant would have a wage loss. Ms. Sprecker felt claimant could reenter the open labor market earning approximately $575.04 a week in the Topeka metropolitan area. This includes fringe benefits. This calculates to a wage loss of 41 percent. Ms. Sprecker indicated claimant has been looking for work, but has not been successful in finding employment.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2013 Supp. 44-501b(b)(c) states:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-510e(a)(2)(A)(B) states:

> (2)(A) Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, and amendments thereto. Compensation for permanent partial general disability shall also be paid as provided in this section where an injury results in:
> (i) The loss of or loss of use of a shoulder, arm, forearm or hand of one upper extremity, combined with the loss of or loss of use of a shoulder, arm, forearm or hand of the other upper extremity;
> (ii) the loss of or loss of use of a leg, lower leg or foot of one lower extremity, combined with the loss of or loss of use of a leg, lower leg or foot of the other lower extremity; or
> (iii) the loss of or loss of use of both eyes.
> (B) The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as

> established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

Claimant suffered accidental injury on September 11, 2013, as the result of a fall from a ladder onto a concrete floor. That fall caused permanent damage to claimant with a resulting change in his physical structure. The functional impairment suffered by claimant has been identified by Dr. Jackson at 15 percent to the whole person and by Dr. Prostic at 20 percent to the whole person. Neither doctor's opinion sufficiently convinces the Board of claimant's actual physical loss sufficient to cause the Board to reject the opinion of the other. As such, the Board finds claimant has suffered a 17.5 percent functional impairment to the whole person.

K.S.A. 2013 Supp. 44-510e(a)(2)(C)(D)(E) states:

> (C) An employee may be eligible to receive permanent partial general disability compensation in excess of the percentage of functional impairment ("work disability'') if:
> (i) The percentage of functional impairment determined to be caused solely by the injury exceeds 7½% to the body as a whole or the overall functional impairment is equal to or exceeds 10% to the body as a whole in cases where there is preexisting functional impairment; and
> (ii) the employee sustained a post-injury wage loss, as defined in subsection (a)(2)(E) of K.S.A. 44-510e, and amendments thereto, of at least 10% which is directly attributable to the work injury and not to other causes or factors.
> In such cases, the extent of work disability is determined by averaging together the percentage of post-injury task loss demonstrated by the employee to be caused by the injury and the percentage of post-injury wage loss demonstrated by the employee to be caused by the injury.
> (D) "Task loss'' shall mean the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform. If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be excluded for the purposes of calculating the task loss which is directly attributable to the current injury.
> (E) "Wage loss'' shall mean the difference between the average weekly wage the employee was earning at the time of the injury and the average weekly wage the employee is capable of earning after the injury. The capability of a worker to earn post-injury wages shall be established based upon a consideration of all factors,

> including, but not limited to, the injured worker's age, physical capabilities, education and training, prior experience, and availability of jobs in the open labor market. The administrative law judge shall impute an appropriate post-injury average weekly wage based on such factors. Where the employee is engaged in post-injury employment for wages, there shall be a rebuttable presumption that the average weekly wage an injured worker is actually earning constitutes the post-injury average weekly wage that the employee is capable of earning. The presumption may be overcome by competent evidence.
> (i) To establish post-injury wage loss, the employee must have the legal capacity to enter into a valid contract of employment. Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.
> (ii) The actual or projected weekly value of any employer paid fringe benefits are to be included as part of the worker's post-injury average weekly wage and shall be added to the wage imputed by the administrative law judge pursuant to K.S.A. 44-510e(a)(2)(E), and amendments thereto.
> (iii) The injured worker's refusal of accommodated employment within the worker's medical restrictions as established by the authorized treating physician and at a wage equal to 90% or more of the pre-injury average weekly wage shall result in a rebuttable presumption of no wage loss.

As claimant has exceeded the required percentage of functional impairment to allow for a work disability, the Board must next consider whether claimant's layoff was generated due to a business purpose or created due to claimant's limitations caused by his work-related injuries.

Respondent contends claimant's loss of wages stems from a planned general layoff due to the conclusion of a contract to assemble cranes. Claimant's limited welding skills was discussed as one of the primary reasons claimant was not retained along with the rest of his crew. Of the six remaining members of claimant's work crew, he was the only one not switched to the new contract associated with respondent's restructuring. As such, respondent contends claimant has failed to qualify for a work disability since his wage loss is not directly attributable to his work injuries.

Claimant contends respondent's argument is a ruse. Claimant contends his layoff was due to his limited production ability, which claimant contends, is directly attributable to his limited physical abilities stemming from the work accident.

The Board finds significant Exhibit 3 to Doug McGuffin's deposition, the August 13, 2014, written warning issued to claimant. The warning was based upon claimant's limited production and his inability to improve on same, after his return to work following the work accident. While respondent contends claimant's limited welding skills are the basis for the layoff, the written warning does not support that claim. Mr. McGuffin acknowledged claimant's production was reduced when claimant missed a significant amount of time when he was misdiagnosed with cancer. After claimant returned to work post cancer

scare, his production improved. However, after claimant suffered his work-related accident and resulting injuries, and returned to work, claimant's production was significantly lower, and did not improve, even after claimant had been returned to regular duty with no restrictions by Dr. Jackson.

Claimant relies, in part, on *Gadberry,*[6] in support of his position. Gadberry returned to work, post-injury, at the employee's pre-injury wage, and within a few weeks of the date of return received a termination notice due to an economic layoff. The Court found Gadberry was not precluded from a wage loss for workers compensation benefits, noting the timing of Gadberry's termination was suspect, even though, as here, Gadberry had been advised, prior to surgery that her employer was going to be downsizing. Gadberry had been told it would not affect her.

Here, claimant's layoff is suspect following the written warning directed to claimant's slower production. Respondent's argument that claimant was let go due to welding limitations, while partly true, does not convince the Board that claimant's limited welding skills was the primary reason for the layoff. A more convincing argument is that claimant's production lessened after the accident and he showed insufficient improvement to cause respondent to want to retain him. The Board finds claimant has satisfied his burden of proving his layoff is directly attributable to the limitations created by his work injury. Therefore, a work disability award is appropriate.

Dr. Jackson reviewed the task list created by Ms. Sprecker, finding claimant had lost no task performing ability. The Board does not find this opinion convincing. Claimant underwent significant surgery to treat the injuries resulting from the accident. For claimant to be returned to physical labor with no restrictions is not credible.

Dr. Prostic reviewed the task lists of Ms. Sprecker and Mr. Dreiling. The Board finds Dr. Prostic's opinion that claimant suffered a 67 percent task loss based upon the Dreiling report and 50 percent based upon the Sprecker report persuasive. In averaging the ratings, the Board finds claimant has suffered a 58.5 percent task loss as the result of his work-related accident with respondent.

Mr. Dreiling opined claimant had suffered a 50 percent loss of wages from this accident. However, his opinion does not take into account the fringe benefits claimant was earning versus what he could hope to earn with a new job. Ms. Sprecker opined claimant had the ability to earn $575.04 in the open labor market, including fringe benefits. This calculates to a 41 percent wage loss based upon the agreed average weekly wage claimant was earning on the date of accident. The Board finds the opinion of Ms Sprecker the most persuasive.

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[6] *Gadberry v. R.L. Polk & Co.*, 25 Kan. App. 2d 800, 975 P.2d 807 (1998).

In averaging claimant's wage loss with his task loss the Board finds claimant has suffered a 49.75 percent work disability as the result of his work-related accident on September 11, 2013. The Award is modified accordingly.

The ALJ denied claimant future medical treatment based upon the recommendations Dr. Jackson. The Board finds Dr. Jackson's opinion the most persuasive on this issue as Dr. Prostic's opinion appears to be based upon speculation. The Board affirms the denial of future medical treatment in the Award.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be modified to award claimant a 17.5 percent whole person functional impairment and a 49.75 percent permanent partial general (work) disability for the injuries suffered on September 11, 2013, while working for respondent. Claimant has satisfied his burden of proving his loss of employment from respondent is attributable to the injuries and limitations from the accident, and not from an economic layoff as alleged. Claimant has failed to prove a need for future medical treatment stemming from this accident. The denial of same is affirmed.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Rebecca Sanders dated May 25, 2016, is modified to award claimant a 17.5 percent whole body functional impairment followed by 49.75 percent permanent partial general disability award.

Claimant is entitled to 10.86 weeks of temporary total disability compensation a the rate of $587.00 per week totaling $6,374.82, followed by 206.46 weeks of permanent partial disability compensation at the weekly rate of $587.00 totaling $121,192.02 for a total award of $127,566.84.

As of September 23, 2016, claimant is entitled to 10.86 weeks of temporary total disability compensation at the rate of $587.00 per week totaling $6,374.82, followed by 158.29 weeks at $587.00 totaling $92,916.23, for a total due and owing of $99,291.05, which is ordered paid in one lump sum, minus amounts previously paid. Thereafter, claimant is entitled to 48.17 weeks of benefits at the rate of $587.00, per week for a total award of $127,566.84. The remainder of the Award is affirmed insofar as it does not contradict the findings and conclusions contained herein.

IT IS SO ORDERED.

Dated this _____ day of October, 2016.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

DISSENT

The undersigned Board Member dissents from the finding of the majority that claimant is not entitled to future medical benefits. Two medical experts testified concerning claimant's need for future medical benefits, Drs. Jackson and Prostic. This Board Member finds Dr. Prostic's opinion that claimant will need future medical treatment more compelling, convincing and credible than Dr. Jackson's opinion that claimant does not need future medical treatment

_____
BOARD MEMBER

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